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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/574,856	05/19/2000	William O. Burke III	2104A	1316

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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

12

DATE MAILED: 08/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n N .

09/574,856

Applicant(s)

BURKE ET AL.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-14,20-26 and 31 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 and 23-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,20-22 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8-9, 20-22 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockwell, Jr. et al. (U.S. 6,296,919 B1) in view of Kerr et al. (U.S. 5,227,214).

Rockwell, Jr. teaches the use of a mold with holes, heated by a press to vulcanize a foam rubber mat with projections and a fabric top (abstract, col. 7, lines 5-15). Kerr et al. '214 teaches mat projections of about 3/32-inch diameter (col. 2, lines 10-15). The instant invention claims a foam rubber mat with projections where the skin of the projections is thick and the projections have a diameter of 1/32 inch to 1/8 inch. It would have been obvious for one of ordinary skill in the art to have understood that there would have been a temperature difference between the surface of the mold next to the heated

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press and the surface against the main body of the mat, which would result in higher temperatures near the bottom of the projection in Rockwell, Jr. et al. Applicant discloses that this temperature difference produces a thick skin at the bottom of the projections, which are closer to the bottom of the mold. This structure meets the instant claim language. It further would have been obvious to make the projections of Rockwell, Jr. et al. about 3/32 inch in diameter to insure good anti-slip properties because of the teachings of Kerr et al. '214.

1. Claims 1-6, 8-9, 20-22 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Derr (U.S. 1,805,038) in view of Kerr et al. (U.S. 5,227,214).

Derr teaches a foam core and projections with a thick rubber skin (Figure 2). Kerr et al. '214 teaches projections of about 3/32-inch diameter. The instant invention claims a foam rubber core with projections with a rubber cover layer or skin around the foam core. It would have been obvious to one of ordinary skill in the art to extend the rubber layer of Derr around the entire foam layer of Derr in order to better protect the layer because of the teachings of Derr that the solid rubber layer protects the foam layer. It further would have been

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obvious to one of ordinary skill in the art to have used 3/32-inch diameter projections as the projections of Derr in order to better prevent slippage because of the teachings of Kerr et al.

'214.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-6, 8-9, 20-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,296,919.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims recite a skin thickness that would have been obvious for the

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article of the patent to have as a result of the method used to make the article claims of the '919 patent as noted above.

2. Claims 1-6, 8-9, 20-22 and 31 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,340,514 B1. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the rubber second layer of '514 is a thick solid layer as instantly claimed.

3. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 10 of copending Application No 09/653,785. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '785 application provides a thick skin around the foam layer.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-10 of copending Application No. 09/679,467. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art that the third layer of the '467 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7 and 10 of copending Application No. 09/672,152. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary

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skill in the art that the third layer of the '152 application provides a thick skin around the foam layer.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

6. Claims 1-6, 8-9, 20-22 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of copending Application No. 09/915,017 in view of Derr (U.S. 1,805,038). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to make the projections of the '017 application out of foam in order to provide better cushioning because of the teachings of Derr.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

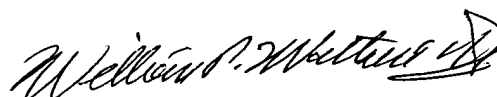
7. Applicant's arguments with respect to claims 1-6, 8-9, 20-22 and 31 have been considered but are moot in view of the new ground(s) of rejection.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

A handwritten signature in black ink, appearing to read "William P. Watkins III", with a stylized flourish at the end.

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**

WW/ww
August 11, 2002